



State of Wisconsin
Governor Scott Walker

Department of Agriculture, Trade and Consumer Protection
Ben Brancel, Secretary

DATE: July 2, 2013

TO: Board of Agriculture, Trade and Consumer Protection

FROM: Ben Brancel, Secretary
Sandy Chalmers, Administrator, Trade and Consumer Protection Division

SUBJECT: Ch. ATCP 125, Manufactured Home Communities – Fair Trade Practices (Final Draft)

PRESENTED BY: Michelle Reinen

REQUESTED ACTION:

At the July 16, 2013 Board meeting, the Department of Agriculture, Trade and Consumer Protection (DATCP) will ask the DATCP Board to authorize a final draft of a proposed rule (copy attached) related to manufactured home communities.

SUMMARY:

Background

ATCP 125 was first promulgated as Ag 125 in 1972. At the time, zoning restrictions led to a shortage of mobile home sites in many areas of the state, which inhibited competition and market choice. The rule was promulgated to address unfair trade practices and methods of competition that emerged in the industry. The rule prohibited mobile home park operators from using unfair or deceptive trade practices. It also required that rental contracts be in writing and contain specific disclosures. The rule was revised in 1976 and again in 1987.

Rule Content

This rule does all of the following:

- Modernizes the existing rule by incorporating the defined terms “manufactured home” and “manufactured home community”. These terms replace the current rule’s “mobile home” and “mobile home park”.

Agriculture generates \$59 billion for Wisconsin

- Repeals the definition “television service” and creates the definition “electronic communication service” which will specify the mechanisms operators are allowed to use, or are prohibited from using, when billing tenants for these services.
- Amends the definition “utility service” to exclude water and sewer services. Section 100.20 (2) (b), Stats., was created after the promulgation of the current rule, which prohibits DATCP from regulating water and sewer services provided by manufactured home community operators.
- Updates the phrase “mobile home parking fee assessed by local units of government” with the term “municipal permit fee,” as specified under ch. 66, Stats.
- Repeals outdated and obsolete provisions in the current rule.

Under the current rule, rent and other charges may not be increased during the term of the rental agreement. However, this provision does not apply to “mobile home parking fees” and charges for utility services not included in rent. This rule expands the exceptions to include waste hauling or recycling fees that are assessed by local units of government.

Under the current rule, rental agreements are required to express the amount of rent due in each rent paying period in dollars. Under the proposed rule, if the tenant requests a rental agreement that is three years or greater, the amount of rent due in each rent paying period may be expressed in either a dollar amount or a defined formula based on the consumer price index.

Under the current rule, a rental agreement may not include a security deposit greater than either \$350 or three months’ rent, whichever is less. This rule updates the maximum security deposit to \$750, or two months’ rent, whichever is less.

Summary of, and Comparison with, Existing or Proposed Federal Statutes and Regulations

The federal government does not generally regulate manufactured home sales or rental practices. However, Congress did pass the National Manufactured Housing Construction and Safety Standards Act of 1974, which direct the Department of Housing and Urban Development (HUD) to develop regulations; which are now known as the Federal Manufactured Housing Construction and Safety Standards.

Comparison with Rules in Adjacent States

Illinois statutes contain the Mobile Home Landlord and Tenant Rights Act. Among other things, this act restricts park owners from prohibiting television antennas, requires written leases, allows for temporary occupancy in certain situations, requires park owners to disclose information about rent charged during the last five years and projections for the next three, and restricts park owners’ ability to control the sale of mobile homes within the park.

Minnesota administrative code regulates mobile home parks and the methods park owners can use to bill residents for utility costs incurred by the community. For example, rental agreements must be in writing and specify certain terms and conditions related to the location of the lot, amount of rent, services or facilities that the park owner agrees to provide, and the name of any person holding a security interest in the resident's home. Minnesota law prohibits park owners from requiring residents to use the services of a particular dealer or broker when selling their home, or buy goods or services from a particular vendor.

Iowa does not have any laws in place related to mobile or manufactured homes or parks. Iowa legislation was introduced in 2011 to grant mobile home residents rights similar to tenants and proposed to place restrictions on park operators operating as real estate agents. This legislation did not pass.

Michigan has law in place related to mobile home park owners and specifies the rights of a tenant. Park owners are prohibited from charging entrance and exit fees, charging more than 1.5 times the amount of monthly rent as a security deposit and cannot require a person to buy a mobile home from another person as a condition of renting space in that park. Park owners must offer tenants a written lease for one year or more, and provide a copy of rules that govern maintenance, pets, fees, and charges that may be incurred by the tenant. Park owners must keep specific written records for each tenant.

Summary of Factual Data and Analytical Methodologies

According to the Department of Safety and Professional Services web page (www.dsps.wisconsin.gov), there are approximately 1,074 licensed manufactured home communities in Wisconsin, with a total of 52,316 home sites (these statistics are from an on-line listing of licensed manufactured home parks by DSPS (March, 2011)).

Effect on Small Business

The rule impacts manufactured home park operators. Many manufactured home park operators are small businesses. This rule does make some minor changes to park operators' duties and responsibilities, but it does not represent major changes from current rule. Therefore, the effect on small business is expected to be minimal.

Hearings

DATCP held two public hearings on this rule. The first was in Wausau on April 30, 2013 and second was in Madison on May 1, 2013. There were no attendees at the Wausau hearing. There were two attendees at the Madison hearing, Ross Kinzler and Amy Bliss, both representing the Wisconsin Housing Alliance. Both registered support for the proposed rule. Mr. Kinzler provided verbal testimony,

DATCP did not receive any written comments.

Changes from Hearing Draft

DATCP made some organizational revisions and technical corrections based on Rules Clearinghouse suggestions. However, there are no substantive policy changes from the hearing draft.

Next Steps

If the Board approves this final draft rule, DATCP will transmit the final draft rule for the Governor's written approval and then for legislative committee review. If the Legislature takes no action to stop the rule, the DATCP Secretary will sign the final rulemaking order and transmit it for publication. The rule will take effect on the first day of the month following publication.

**PROPOSED ORDER
OF THE WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION
ADOPTING RULES**

1 The Wisconsin department of agriculture, trade and consumer protection proposes the following
2 rule *to repeal* ATCP 125.01 (8), and 125.03 (4) (c) (Note); *to renumber and amend* ATCP
3 125.01 (1); *to amend* ATCP 125 (Title), 125.01 (2), (3), (7) (intro), (9), and (10) (a), (c) and (d),
4 125.02 (1) to (4), 125.03 (1) (intro.), (a), (d), (e), (f) and (g) and (4) (a), 125.04 (1) (intro.), (b)
5 and (c), (2) (d) and (e), and (3) (a) and (b), 125.05 (Title), (2) (b), (c) and (f), (3) and (4), 125.06
6 (Title) and (1), 125.07 (Title) and (1), 125.08 (1) and (Note) and (3), 125.09 (1), (3) and (4) and
7 (Note); and 134.02 (2); and to *create* ATCP 125.01 (1e) and (1m), 125.03 (1) (am), (1) (em) and
8 (1) (h); *relating to* Manufactured Home Communities – Fair Trade Practices, and affecting small
9 business.

**Analysis Prepared by the Department
of Agriculture, Trade and Consumer Protection**

Statutes Interpreted

Statutes Interpreted: s. 100.20 (1), Stats.

Statutory Authority

Statutory Authority: ss. 93.07 (1) and 100.20 (2), Stats.

Explanation of Statutory Authority

DATCP has broad general authority to interpret statutes under its jurisdiction (see s. 93.07(1), Stats.)

DATCP has authority under s. 100.20 (2) (a), Stats., to promulgate rules forbidding methods of competition or trade practices which the department determines to be unfair, and to prescribe fair methods of competition and trade practices. Section 100.20 (2) (b), Stats., prohibits DATCP from promulgating any rules that regulates the provision of water or sewer service by a manufactured home community operator.

Related Statutes and Rules

Subchapter V of Ch. 101, Stats., regulates manufactured homes and mobile homes and establishes licensing programs within the Wisconsin Department of Safety and Professional Services (DSPS) for manufactured home community operators, dealers, installers, salespersons, and manufacturers. This subchapter also establishes the state system for certifying titles of ownership on mobile homes and manufactured homes; and contains a number of requirements and standards related to the homes themselves, water and sewer connections, and standards for manufactured home communities.

Chapter 704, Stats., regulates transactions between landlords and both residential and non-residential tenants. The department does not administer ch. 704. Stats.

Section 710.15, Stats., contains several provisions related to manufactured and mobile home community regulations, including a prohibition against operators considering the age of a mobile home or manufactured home as a determining factor in leasing a lot to that resident.

Chapter ATCP 134, Wis. Admin. Code, regulates relationships between landlords and tenants in residential rental transactions, including prohibiting a landlord from renting condemned premises and prescribing procedures for handling security deposits.

Chapter SPS 326, Wis. Admin. Code, regulates standards for manufactured home communities, including the regulation of park operators' delivery and billing of water and sewer services. Chapter SPS 326 specifies the minimum width of streets and the provision of fire hydrants, and all plans for new manufactured home communities or the expansion of existing manufactured home communities, must be approved by DSPS.

Plain Language Analysis

Background

Chapter ATCP 125 was first promulgated as Ag 125 in 1972. At the time, zoning restrictions led to a shortage of mobile home sites in many areas of the state, which inhibited competition and market choice. The rule was promulgated to address unfair trade practices and methods of competition that emerged in the industry. The rule prohibited mobile home park operators from using unfair or deceptive trade practices. It also required that rental contracts be in writing and contain specific disclosures. The rule was revised in 1976 and again in 1987.

Rule Content

This rule does all of the following:

- Modernizes the existing rule by incorporating the defined terms “manufactured home” and “manufactured home community”. These terms replace the current rule’s “mobile home” and “mobile home park”.
- Repeals the definition “television service” and creates the definition “electronic communications service”. The rule specifies the mechanisms operators are allowed to use, or are prohibited from using, when billing tenants for these services.
- Amends the definition “utility service” to exclude water and sewer services, and telephone service. Section 100.20 (2) (b), Stats., was created after the promulgation of the current rule, which prohibits DATCP from regulating water and sewer services provided by manufactured home community operators. Under this rule, telephone services are included in the definition of “electronic communications service”
- Updates the phrase “mobile home parking fee assessed by local units of government” with the term “municipal permit fee,” as specified under ch. 66, Stats.
- Repeals outdated and obsolete provisions in the current rule.

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Analysis and Supporting Documents used to Determine Effect on Small Business or in Preparation of an Economic Impact Analysis

DATCP convened an Ad Hoc Advisory Group to provide input into the rule and its effects. This group was made-up of two representatives of manufactured home community owners and two tenants' rights advocates.

Effect on Small Business

The rule impacts manufactured home park operators. Many manufactured home park operators are small businesses. This rule does make minor changes to park operators' duties and responsibilities, but will only have a very minor monetary impact. For more detail on the effect of the proposed rule on small business, see the attached *Initial Regulatory Flexibility Analysis*.

DATCP Contact

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Place Where Comments can be Submitted and Deadline for Submission

Questions and comments related to this rule may be directed to:

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Telephone (608) 224-4928
E-Mail: kevin.leroy@wi.gov

Rule comments will be accepted up to two weeks after the last public hearing is held on this rule. Hearing dates will be scheduled after this rule is approved by the Board of Agriculture, Trade and Consumer Protection.

1 SECTION 1. ATCP 125 (Title) is amended to read:

2 ATCP 125 (Title) **MOBILE MANUFACTURED HOME PARKS COMMUNITIES –**
3 **FAIR TRADE PRACTICES**

4 SECTION 2. ATCP 125.01 (1) is renumbered ATCP 125.01 (1s) and amended to read:

5 ATCP 125.01 (1s) "Mobile Manufactured Home" means a any of the following:

6 (a) A manufactured home as defined in s. 101.91 (2) (am), Stats.

1 (b) A unit designed to be towed or transported and used as a residential dwelling, but
2 does not include a unit used primarily for camping, touring, or recreational purposes.

3 SECTION 3. ATCP 125.01 (1e) and (1m) are created to read:

4 ATCP 125.01 (1e) "CPI" means the annual average consumer price index – all urban
5 consumers, as calculated and published by the United States bureau of labor statistics.

6 (1m) "Electronic communications service" has the meaning given in s. ATCP 123.01 (5).

7 SECTION 4. ATCP 125.01 (2), (3) and (7) (intro.) are amended to read:

8 ATCP 125.01 (2) "~~Mobile~~ Manufactured home park community" means any tract of land
9 containing 2 or more sites.

10 (3) "Operator" means any person engaged in the business of renting sites in a ~~mobile~~
11 manufactured home park community to tenants. "Operator" includes officers, representatives,
12 agents and employees.

13 (7) (intro.) "Site" means any plot of land ~~which~~ that is rented or offered for rental for the
14 accommodation of a ~~mobile~~ manufactured home used for residential purposes. It does not
15 include a plot of land rented for the accommodation of a ~~mobile~~ manufactured home ~~which~~ that
16 is:

17 SECTION 5. ATCP 125.01 (8) is repealed.

18 SECTION 6. ATCP 125.01 (9) and (10) (a), (c) and (d) are amended to read:

19 ATCP 125.01 (9) "Tenant" means any person residing in a manufactured home, and
20 renting a site from an operator.

21 (10) (a) Electricity, ~~water, sewer, telephone~~, and natural gas;

22 (c) Fuel oil supplied through a permanent central system in the ~~mobile~~ manufactured
23 home ~~park~~ community; and

1 (d) ~~Television~~ Electronic communications service.

2 SECTION 7. ATCP 125.02 (1) to (4) and (6) are amended to read:

3 ATCP 125.02 **Tie-in sales; separate or discriminatory charges.** No operator shall:

4 (1) Require, as a condition to the rental of any site, the purchase of a ~~mobile~~
5 manufactured home from the operator or any dealer, manufacturer, or agent named by the
6 operator.

7 (2) Represent to any person that the purchase of a ~~mobile~~ manufactured home from the
8 operator or any dealer, manufacturer, or agent named by the operator will give the purchaser an
9 advantage over others in the rental or continued occupancy of a site.

10 (3) Discriminate or threaten to discriminate in rental charges or in any other respect
11 against a tenant for failure of the tenant to purchase a ~~mobile~~ manufactured home from the
12 operator or any dealer, manufacturer, or agent named by the operator.

13 (4) Solicit or receive any payment or other thing of value from any seller of a ~~mobile~~
14 manufactured home for agreeing to rent a site to the purchaser of such ~~mobile~~ manufactured
15 home.

16 (6) Use a ~~mobile~~ manufactured home site to display a ~~mobile~~ manufactured home
17 offered for sale, or rent a site to a ~~mobile~~ manufactured home dealer for purposes other than
18 accommodation of a ~~mobile~~ manufactured home occupied as a residence, if the use or rental of
19 the site results in there being no site in the ~~mobile~~ manufactured home park community available
20 to a prospective tenant who does not purchase a ~~mobile~~ manufactured home from the operator or
21 renting dealer.

22 SECTION 8. ATCP 125.03 (1) (intro), (a), (d), and (e) are amended to read:

1 **ATCP 125.03 Rental agreement; requirements.** (1) Every rental agreement shall be in
2 writing. A copy of the rental agreement shall be furnished to the tenant at the time the rental
3 agreement is executed. If a ~~mobile~~ manufactured home is purchased from or through the
4 operator, a copy of the rental agreement shall be furnished to the tenant before the tenant signs
5 the ~~mobile~~ manufactured home purchase contract. The rental agreement shall conspicuously set
6 forth all terms and conditions affecting the rental of the site, and shall include:

7 (a) The amount of rent for each rent paying period and all property, services and
8 facilities provided by the operator and included in the rent. Except as provided in sub. (5), the
9 amount of the rent shall be expressed in a dollar amount.

10 (d) The approximate size of the site and its location in the ~~park~~ manufactured home
11 community.

12 (e) The amount of the monthly ~~mobile home parking~~ municipal permit fee assessed by
13 local units of government and payable by the tenant. If the monthly fee is not known, an
14 approximation shall be given.

15 **SECTION 9.** ATCP 125.03 (1) (em) is created to read:

16 ATCP 125.03 (1) (em) The amount and due dates of fees assessed by local units of
17 government for waste hauling, recycling, or similar services payable by the tenant. If the amount
18 and due dates are not known, an approximation shall be given.

19 **SECTION 10.** ATCP 125.03 (1) (f) and (g) are amended to read:

20 ATCP 125.03 (1) (f) Notice that the operator reserves the right to screen the purchaser of
21 a tenant's ~~mobile~~ manufactured home before renting a ~~mobile home~~ site to the purchaser, subject
22 to s. 710.15, Stats.

1 (g) A disclosure as to whether the ~~mobile~~ manufactured home ~~park~~ community contains
2 an emergency shelter, and, if the park has an emergency shelter, the location of the emergency
3 shelter and procedures for its use.

4 SECTION 11. ATCP 125.03 (1) (h) is created to read:

5 ATCP 125.03 (1) (h) A copy of the manufactured home community rules and
6 regulations.

7 SECTION 12. ATCP 125.03 (4) (intro) and (a) are amended to read:

8 ATCP 125.04 (4) (intro) Rent Except as provided in subsection (5), rent and other
9 charges under the rental agreement may not be increased during the term of the rental agreement.
10 This subsection does not apply to:

11 (a) ~~Mobile home parking~~ Municipal permit fees, recycling fees, waste hauling fees, or
12 other fees assessed by local units of government.

13 SECTION 13. ATCP 125.03 (4) (c) (Note) is repealed.

14 SECTION 14. ATCP 125.03 (5) is created to read:

15 ATCP 125.03 (5) If the rental agreement is for a period of three years or greater, and all
16 of the following conditions are met, the amount of rent due each rent paying period may be
17 expressed as a formula that includes a base dollar amount and a future adjustment factor tied to
18 the CPI:

19 (a) The operator offered the tenant the option of entering into a rental agreement that was
20 for a period of less than three years.

21 (b) The rental agreement specifies the initial amount of rent due for each rent paying
22 period, and that the operator shall provide the tenant with actual dollar amounts of rent due in
23 future rent paying periods as applicable.

1 (c) If the actual dollar amount of rent due changes under the formula, the operator shall
2 provide the tenant written notice at least 60 calendar days before the new actual dollar amount is
3 due.

4 SECTION 15. ATCP 125.04 (1) (intro), (b), and (c), (2) (b), (d) and (e), and (3) (a) and
5 (b) are amended to read:

6 ATCP 125.04 (1) (intro) No operator may charge an entrance fee or exit fee in return for
7 allowing the movement of a ~~mobile~~ manufactured home into or out of a ~~mobile home park~~
8 manufactured home community. This subsection does not apply to:

9 (b) A security deposit not exceeding the amount of ~~3~~ 2 months' rent or \$~~350~~ \$750,
10 whichever is less.

11 (c) Material and labor costs incurred by the operator to move a tenant's ~~mobile~~
12 manufactured home into or out of the ~~mobile home park~~ manufactured home community, to
13 install the ~~mobile~~ manufactured home on a site or remove it from a site, or to connect or
14 disconnect utility services. The amount of any charges, or the basis upon which charges are to
15 be calculated, shall be clearly set forth in the rental agreement.

16 (2) (b) Service provided by the operator in the installation of a ~~mobile~~ manufactured
17 home on a site, or in the removal of a ~~mobile~~ manufactured home from a site, pursuant to sub.
18 (1) (c).

19 (d) Services involving the transportation of a mobile home to or from the site within the
20 ~~mobile home park~~ manufactured home community, if the operator can show that the person
21 providing the service has damaged ~~the park property within the manufactured home~~
22 community during a previous move and failed to compensate the operator for the damages.

(e) A nondiscriminatory prohibition against sales solicitations within the ~~mobile home~~
~~park~~ manufactured home community.

(3) (a) Charges for a utility service provided through the operator's facilities, if not
included in the rent, shall be based on the amount of the utility service used by tenants.
Charges for ~~television~~ electronic communications service provided through the operator's
facilities may be assessed in the form of a uniform charge to subscribing tenants, subject to par.

(b). Charges, or the method of computing charges for utility services provided through the
operator's facilities shall be set forth in the rental agreement under s. ATP 125.03 (1) (b).

(b) If ~~television~~ electronic communication service is provided by the operator but not
included in the rent, the operator may not limit a tenant's access to ~~television~~ electronic
communication service provided by an outside source.

SECTION 16. ATP 125.05 (Title) is amended to read:

ATCP 125.05 (Title) Changes in rental terms or ~~park~~ manufactured home
community rules.

SECTION 17. ATP 125.05 (2) (b), (c), and (f), (3) and (4) are amended to read:

ATCP 125.05 (2) (b) Rules limiting occupancy of ~~mobile~~ manufactured homes with
respect to the number or age of occupants.

(c) Vehicle parking rules imposed by the ~~park~~ operator.

(f) Rules requiring tenants to repair or maintain their ~~mobile~~ manufactured home.

(3) Except as otherwise provided in this chapter, ~~a park~~ an operator may change or create
general ~~park~~ manufactured home community rules and regulations during the term of any rental
agreement or tenancy, provided all tenants are given at least 28 days prior written notice of any

1 proposed change, and an opportunity to meet with the operator or a representative of the operator
2 on the proposed change before it takes effect.

3 (4) Notice of proposed changes in rental terms and conditions or park manufactured
4 home community rules and regulations under this section may be furnished to the tenant in
5 person or by mail. Notice by mail shall be considered actual notice.

6 SECTION 18. ATCP 125.06 (Title) and (1) are amended to read:

7 ATCP 125.06 Sale of ~~mobile~~ manufactured home; transfer of tenancy. (1) No
8 operator may:

9 (a) Require any tenant to designate the operator, or any person named by the operator, as
10 agent for the sale of a tenant's ~~mobile~~ manufactured home, or unreasonably restrict the sale of a
11 tenant's ~~mobile~~ manufactured home by the tenant or an agent of the tenant's own choosing.

12 Note: Sections 710.15 (3) and (4), Stats., provide that:

13 *"(3) PROHIBITED CONSIDERATION OF AGE OF MOBILE HOME OR*
14 *MANUFACTURED HOME. (a) An operator may not deny a resident the opportunity*
15 *to enter into or renew, and may not include, exclude or alter any terms of, a lease*
16 *to continue to locate a mobile home or manufactured home in the park community*
17 *solely or in any part on the basis of the age of the mobile home or manufactured*
18 *home.*

19 *(b) An operator may not require the removal of a mobile home or*
20 *manufactured home from a park community solely or in any part of the basis of*
21 *the age of the mobile home or manufactured home, regardless of whether the*
22 *ownership or occupancy of the mobile home or manufactured home has changed*
23 *or will change."*

24 *"(4) PROHIBITED CONSIDERATION OF CHANGE IN OWNERSHIP OR OCCUPANCY*
25 *OF MOBILE HOME OR MANUFACTURED HOME. An operator may not require the*
26 *removal of a mobile home or manufactured home from a park community solely*
27 *or in any part because the ownership or occupancy of the mobile home or*
28 *manufactured home has changed or will change. An operator may refuse to enter*
29 *into an initial lease with a prospective resident or ~~mobile~~ home occupant for any*
30 *other lawful reason."*
31

1 (b) Solicit or receive any payment or other thing of value as a condition to the
2 assignment or sublease of a rental agreement by a tenant, or as a condition to the transfer of
3 tenancy to a buyer of the tenant's ~~mobile~~ manufactured home.

4 (c) Sell, for placement in a ~~mobile-home park~~ manufactured home community owned or
5 operated by the operator, any ~~mobile~~ manufactured home purchased from a tenant who was
6 prohibited from selling the home directly for placement in the ~~mobile-home park~~ manufactured
7 home community.

8 (d) Refuse to rent a ~~mobile-home~~ site to the purchaser of a tenant's ~~mobile~~ manufactured
9 home except for reason specified under s. 710.15 (5m), Stats. This does not prohibit the
10 screening of prospective tenants by an operator.

11 (e) Limit a tenant's ability to post, on the tenant's ~~mobile~~ manufactured home or on the
12 site on which the mobile home is located, a "For Sale" sign or other advertisement announcing
13 the tenant's offer to sell the tenant's ~~mobile~~ manufactured home if the limitation is not applied
14 uniformly to every person, including the operator and any ~~mobile~~ manufactured home dealer,
15 who sells or offers to sell a ~~mobile~~ manufactured home on site in the ~~mobile-home park~~
16 manufactured home community.

17 SECTION 19 . ATCP 125.07 (Title) and (1) are amended to read:

18 **ATCP 125.07 (Title) Mobile Manufactured home relocation.** (1) No tenant shall be
19 required to relocate a ~~mobile~~ manufactured home within a ~~park~~ manufactured home community
20 during the term of the rental agreement, or to assume the cost of any required relocation under a
21 new or renewal rental agreement, except in emergency or where the tenant has violated the terms
22 and conditions of the rental agreement. This does not apply to a mobile home ~~which~~ that has
23 been vacated by the tenant.

1 SECTION 20. ATCP 125.08 (1) and (Note), and (3) are amended to read:

2 ATCP 125.08 (1) Whenever an operator terminates any rental agreement or refuses, upon
3 the expiration of a lease, to renew the lease or to enter into a new rental agreement, the operator
4 shall provide the tenant with written notice setting forth the reason for such termination or
5 refusal. Notices of termination shall comply with the requirements of s. 710.15 and ch. 704,
6 Stats., as applicable. If the rental agreement does not comply with the requirements of s. ATCP
7 125.03 (1) (intro.) and (2), the operator shall comply with the notice requirements of s. 704.17
8 (2), Stats., when terminating a tenancy, unless the ~~park~~ operator or tenant proves that other notice
9 requirements under s. 704.17 (1) or (3), Stats., are applicable.

10 **Note:** Section 710.15 (5m) Stats., provides that:

11 *"Notwithstanding ss. 704.17 and 704.19, the tenancy of a resident or*
12 *~~mobile-home~~ occupant in a park community may not be terminated, nor may the*
13 *renewal of the lease be denied by the park community operator, except upon any*
14 *of the following grounds:*

15 (i) *Failure to pay rent due, or failure to pay taxes or any other charges*
16 *due for which the park community owner or operator may be liable.*

17 (ii) *Disorderly conduct that results in a disruption to the rights of others*
18 *to the peaceful enjoyment and use of the premises.*

19 (iii) *Vandalism or commission of waste of the property.*

20 (iv) *A breach of any term of the lease.*

21 (v) *Violation of park community rules that endangers the health or safety*
22 *of others or disrupts the right to the peaceful enjoyment and use of the premises*
23 *by others, after written notice to cease the violation has been delivered to the*
24 *resident or ~~mobile-home~~ occupant.*

25 (vi) *Violation of federal, state or local laws, rules or ordinances relating*
26 *to mobile homes or manufactured homes after written notice to cease the violation*
27 *has been delivered to the resident or ~~mobile-home~~ occupant.*

28 (vii) *The park community owner or operator seeks to retire the park*
29 *community permanently from the housing market.*

30 (viii) *The park community owner or operator is required to discontinue use*
31 *of the park community for the purpose rented as a result of action taken against*
32 *the park community owner or operator by local or state building or health*
33 *authorities and it is necessary for the premises to be vacated to satisfy the relief*
34 *sought by the action.*

35 (ix) *The physical condition of the mobile home or manufactured home*
36 *presents a threat to the health or safety of its occupants or others in the park*

1 *community or, by its physical appearance, disrupts the right to the enjoyment and*
2 *use of the ~~park~~ community by others.*

3 (i) *Refusal to sign a lease.*

4 (j) *Material misrepresentation in the application for tenancy.*

5 (k) *Other good cause."*
6

7 (3) No operator may solicit or receive any payment or other thing of value, except for
8 normal rental payments, in return for permitting a tenant to leave the tenant's mobile home in the
9 ~~park~~ manufactured home community upon termination of tenancy.

10 SECTION 21. ATCP 125.09 (1), (3) and (4) and (Note) are amended to read:

11 ATCP 125.09 (1) Make any false, deceptive, or misleading representation to induce a
12 ~~mobile~~ manufactured home sale or site rental, or make any representation inconsistent with or
13 contrary to the written rental agreement.

14 (3) Require any tenant to make permanent improvements to the ~~mobile home park~~
15 manufactured home community or any of its facilities, or assess any separate charge therefor.
16 This subsection does not prevent the operator from requiring the tenant to install the
17 manufactured home according to applicable installation codes.

18 (4) Enter a tenant's ~~mobile~~ manufactured home without the tenant's permission and
19 reasonable prior notice to the tenant. This does not prohibit the operator from entering a tenant's
20 ~~mobile~~ manufactured home if the tenant cannot be contacted and the operator reasonably
21 believes that entry is necessary because of emergency, or to preserve and protect the ~~mobile~~
22 manufactured home or the ~~mobile home park~~ manufactured home community.

23 **Note:** Entry by an operator into a tenant's ~~mobile~~ manufactured home may be prohibited
24 by other applicable law.

25
26 SECTION 22. ATCP 134.02 (2) is amended to read:

1 ATCP 134.02 (2) "Dwelling unit" means a structure or that part of a structure that is
2 primarily used as a home, residence, or place of abode. The term includes a ~~mobile~~ manufactured
3 home or ~~mobile~~ manufactured home site as defined in s. ATCP 125.01 ~~(4)~~ (1s) and (7).

4 **SECTION 23. EFFECTIVE DATE:** This rule takes effect on the first day of the month
5 following publication in the Wisconsin administrative register, as provided in s. 227.22 (2)
6 (intro.), Stats.

Dated this _____ day of _____, _____.

WISCONSIN DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By: _____
Ben Brancel
Secretary

Wisconsin Department of Agriculture, Trade and Consumer Protection

Initial Regulatory Flexibility Analysis

Rule Subject: Manufactured Home Communities
Adm. Code Reference: ATCP 125
Rules Clearinghouse #: Not yet assigned
DATCP Docket #: 12-R-06

Rule Summary

This rule does all of the following:

- Modernizes the existing rule by incorporating the defined terms “manufactured home” and “manufactured home community”. These terms replace the current rule’s “mobile home” and “mobile home park”.
- Repeals the definition “television service” and creates the definition “electronic communication service” which will specify the mechanisms operators are allowed to use, or are prohibited from using, when billing tenants for these services.
- Amends the definition “utility service” to exclude water and sewer services. Section 100.20 (2) (b), Stats., was created after the promulgation of the current rule, which prohibits DATCP from regulating water and sewer services provided by manufactured home community operators.
- Updates the phrase “mobile home parking fee assessed by local units of government” with the term “municipal permit fee,” as specified under ch. 66, Stats.
- Repeals outdated and obsolete provisions in the current rule.

Under the current rule, rent and other charges may not be increased during the term of the rental agreement. However, this provision does not apply to “mobile home parking fees” and charges for utility services not included in rent. This rule expands the exceptions to include waste hauling or recycling fees that are assessed by local units of government.

Under the current rule, rental agreements are required to express the amount of rent due in each rent paying period in dollars. Under the proposed rule, if the tenant requests a rental agreement that is three years or greater, the amount of rent due in each rent paying period may be expressed in either a dollar amount or a defined formula based on the consumer price index.

Under the current rule, a rental agreement may not include a security deposit greater than either \$350 or three months’ rent, whichever is less. This rule updates the maximum security deposit to \$750, or two months’ rent, whichever is less.

Small Business Affected

This rule will have some limited effect on manufactured home community operators and tenants. Many operators are small businesses. According to the Department of Safety and Professional Services web page, there are about 1,074 licensed manufactured home communities in Wisconsin. Collectively, they have a total of 52,316 home sites. (These statistics are from an on-line listing of licensed manufactured home parks by DSPS, dated March, 2011.)

Many of the differences between this rule and the current rule are technical in nature (such as updating terms to conform to other rules and statutes, etc.) and have no impact. Other changes that might have some limited impact are listed below.

- ***Electronic communications services.*** Under current rules, television service provided through the operator's facilities may be assessed in the form of a uniform charge to subscribing tenants. This rule replaces the term "television service" with "electronic communications service". Therefore, for example, if internet service is provided through the operator's facilities, the operator may charge subscribing tenants a uniform charge to use the service. Under both the current rule and this proposed rule, either the amount charged for the service or the method for computing the charge must be set forth in the rental agreement.

This change may benefit tenants because they will have more options for receiving electronic communications services. Under this rule, operators have a method for passing the cost of providing these increased service options to tenants.

- ***Municipal waste hauling or recycling fees.*** Current rule prohibits manufactured home community operators from increasing rent and other charges during the term of the rental agreement. There are exceptions to this prohibition for utility services (that are not included in rent) and municipal permit fees. This rule also allows an exception for waste hauling fees charged by a municipal government.

This change may benefit manufactured home community operators because it allows them to pass municipal fee increases to tenants at the time they are incurred, rather than waiting until the next rental agreement renewal date.

- ***Inflation indexing on rental agreements of three years or longer.*** Current rule requires rental agreements to include the amount of the rent due in each rent-paying period. Under this proposed rule, rental agreements that are three years or longer may include a formula for adjusting future rental amounts based on the Consumer Price Index.

Manufactured homes can be financed using home mortgages. However, many lenders are hesitant to offer a mortgage if the term of the mortgage is longer than the term of the rental agreement. But community operators are generally unwilling to commit to long-term leases under current rules because they are unwilling to specify a dollar amount that will be in place far into the future. This proposed rule should benefit manufactured home owners by making it more likely that they will be able to finance the purchase of their home as a mortgage (rather than personal property).

- *Maximum security deposits.* Current rule limits the amount of security deposit that an operator can collect to three months' rent or \$350, whichever is less. This rule provision dates back to 1987. \$350 in 1987 is roughly equivalent to \$715 in 2012. This proposed rule revises the maximum security deposit to either two months' rent or \$750, whichever is less.

Raising the dollar amount to \$750 may benefit some manufactured home community operators because it allows them to collect security deposits that are more realistic with current economics. Limiting the security deposit to two months rather than three will benefit tenants whose monthly rents are relatively low.

Reporting, Bookkeeping and other Procedures

This proposed rule does not make any changes from current rule relating to reporting, bookkeeping and other procedures.

Professional Skills Required

The proposed rule does not make any changes from current rule relating to professional skills required.

Accommodation for Small Business

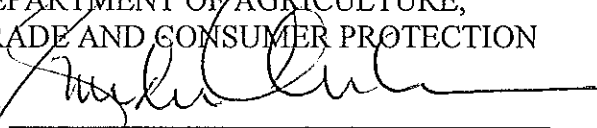
Many of the businesses affected by this rule are "small businesses." For the most part, this rule does not make special exceptions for "small businesses." The nature of the subject matter does not lend itself to differentiating between business sizes.

Conclusion

This rule will generally benefit affected businesses, including "small businesses." Negative effects, if any, will be few and limited. This rule will not have a significant adverse effect on "small business," and is not subject to the delayed "small business" effective date provided in s. 227.22(2)(e), Stats.

Dated this 1 day of July, 2013.

STATE OF WISCONSIN
DEPARTMENT OF AGRICULTURE,
TRADE AND CONSUMER PROTECTION

By 
Sandy Chalmers, Administrator
Division of Trade and Consumer Protection

**ADMINISTRATIVE RULES
FISCAL ESTIMATE
AND ECONOMIC IMPACT ANALYSIS**

Type of Estimate and Analysis

☒ Original ☐ Updated ☐ Corrected

Administrative Rule Chapter, Title and Number

Ch. ATCP 125, Mobile Home Parks

Subject

Manufactured Home Communities – Fair Trade Practices

Fund Sources Affected

☒ GPR ☐ FED ☐ PRO ☐ PRS ☐ SEG SEG-S

Chapter 20 , Stats. Appropriations Affected

20.115(1)(a)

Fiscal Effect of Implementing the Rule

☒ No Fiscal Effect
☐ Indeterminate

☐ Increase Existing Revenues
☐ Decrease Existing Revenues

☐ Increase Costs
☐ Could Absorb Within Agency's Budget
☐ Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

☐ State's Economy
☐ Local Government Units

☒ Specific Businesses/Sectors
☐ Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes ☒ No

Policy Problem Addressed by the Rule

Modernizes the existing rule by incorporating the defined terms “manufactured home” and “manufactured home community”. These terms replace the current rule’s “mobile home” and “mobile home park”.

The current rule regulates how mobile home park operators can charge tenants for utility services, including “television service”. This rule repeals the term “television service” and replaces it with the more modern and more expansive term “electronic communications service”. It does not, however, change the mechanisms that operators are allowed to use or are prohibited from using when billing tenants for these services.

In current rules, the definition of “utility service” includes water and sewer services. This rule amends the definition of “utility service” to exclude water and sewer services. Since the promulgation of the current rule, s. 100.20 (2) (b) of the statutes has been created. This subsection prohibits DATCP from regulating water and sewer services provided by manufactured home community operators.

This rule follows convention in statute and other rules by replacing the phrase “mobile home parking fee assessed by local units of government” with the term from Ch. 66 of the statutes, “municipal permit fee”.

Under the current rule, rent and other charges may not be increased during the term of the rental agreement. However, this provision does not apply to “mobile home parking fees” and charges for utility services not included in rent. This rule expands the exceptions to include waste hauling or recycling fees that are assessed by local units of government.

This rule repeals outdated and obsolete provisions in the current rule.

Under current rule, rental agreements are required to express the amount of rent due in each rent paying period in dollars. Under the proposed rule, if the tenant requests a rental agreement that is greater than three years, the amount of rent due in each rent paying period may be expressed in either a dollar amount or a defined formula based on the consumer price index.

Under the current rule, a rental agreement may not include a security deposit greater than either \$350 or three months' rent, whichever is less. This rule changes the maximum security deposit to \$750 or two months' rent, whichever is less.

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

This rule makes minor updates and revisions to the existing rule and does not represent any significant shift in policy. Therefore, the economic and fiscal impacts are expected to be minimal.

This rule does make some minor changes to park operators' duties and responsibilities, but these changes are not expected to have an economic impact.

Under the current rule, the maximum amount of security deposit that a park operator can collect is three month's rent or \$350, whichever is less. Under this rule, the maximum security deposit is two month's rent or \$750, whichever is less. This means that, in many cases but not all, park operators will be able to ask prospective tenants for higher security deposits.

Under current rules, rental agreements are required to express the amount of rent due in each rent paying period in dollars. Under the proposed rule, if the tenant requests a rental agreement that is greater than three years, the amount of rent due in each rent paying period may be expressed in either a dollar amount or a defined formula based on the consumer price index. This provision should benefit some tenants by removing an impediment to obtaining home mortgage loans. Generally, banks are unwilling to finance the purchase of a manufactured home if that home is sitting on a rented lot and the term of the rental agreement will expire before the term of the mortgage. However, because current rules require park operators to state rent payments in dollar amounts, park operators are generally unwilling to agree to long-term rental agreements. This rule removes this disincentive and therefore may benefit residents.

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

Benefits

This rule will benefit mobile home owners and park operators. Generally, it continues policies that have been in place for a number of years.

Alternatives

The alternative to updating this rule is to do nothing. However, certain portions of the rule are now obsolete (such as the regulation of water and sewer services) and other portions are somewhat dated (such as the use of the term "mobile home" as opposed to "manufactured home").

Long Range Implications of Implementing the Rule

There are no long term implications of implementing this rule.

Compare With Approaches Being Used by Federal Government

The federal government does not generally regulate manufactured home sales or rental practices. However, Congress did pass the National Manufactured Housing Construction and Safety Standards

Act of 1974, which direct the Department of Housing and Urban Development (HUD) to develop regulations; which are now known as the Federal Manufactured Housing Construction and Safety Standards.

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

Illinois statutes contain the Mobile Home Landlord and Tenant Rights Act. Among other things, this act restricts park owners from prohibiting television antennas, requires written leases, allows for temporary occupancy in certain situations, requires park owners to disclose information about rent charged during the last five years and projections for the next three, and restricts park owners' ability to control the sale of mobile homes within the park.

Minnesota administrative code regulates mobile home parks in a variety of ways. For example, rental agreements must be in writing and must specify certain terms and conditions, such as: the location of the lot, amount of rent, services or facilities that the park owner agrees to provide, and the name of any person holding a security interest in the resident's home. Minnesota law prohibits park owners from requiring residents use the services of a particular dealer or broker when selling their home, or buy goods or services from a particular vendor. Minnesota law also regulates methods park owners can use to bill residents for utility costs incurred by the community.

In 2011, the Iowa legislature considered, but did not pass, a bill that would have granted mobile home residents rights similar to other tenants. The bill would have required park owners to provide "good cause" when they evict tenants, and give tenants time to remedy the problems that are causing them to be evicted. The bill would have also granted tenants 30 days to repay overdue rent. Under current law, they only have three days. Finally, the bill would have placed restrictions on park operators operating as real estate agents.

Michigan law requires mobile home park owners to offer tenants a written lease for one year or more, give the park tenant a copy of rules that govern maintenance, pets, fees, and charges, and keep certain written records for each tenant. Park owners are prohibited from charging entrance and exit fees, charge more than 1.5 times the monthly rent as a security deposit, or require a person to buy a mobile home from another person as a condition of renting a space in the park. Park owners are also prohibited from requiring residents to purchase goods or services as a condition of renting space in the park, and are prohibited from refusing to rent a space unless a tenant buys a specific model of home from a specific manufacturer or dealer.

Comments Received in Response to Web Posting and DATCP Response

No comments were received in response either to the posting on the DATCP external website or the statewide administrative rules website.

